UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1557/Add.1
4 March 1997

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE

Fifty-eighth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 1557th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 7 November 1996, at 10.35 a.m.

Chairman: Mr.EL SHAFEI
(Vice-Chairman)

later: Mr. AGUILAR URBINA

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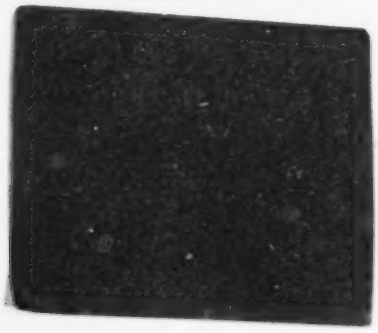

* The summary record of the first part (closed) of the meeting appears as document CCPR/C/SR.1557.

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GE.96-18930 (E)

The public part of the meeting was called to order at 10.35 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

1. The CHAIRMAN invited the Committee to discuss its methods of work and, in particular, to consider the draft amendments to its rules of procedure. Regarding its methods of work in general, the members of the Committee had received an informal note containing recommendations. The draft amendments to the rules of procedure, drafted by Mr. Kretzmer, were contained in a document without symbol, issued in English only, dated 4 November 1996.

2. Mr. BUERGENTHAL suggested that the Committee should adopt the recommendations contained in the note without a debate, as they had been agreed upon in principle. Clearly, if difficulties arose when the Committee began to implement them, it would be able to make the necessary adjustments. When precise guidelines on particular matters covered by the note had been drawn up, they would of course be submitted to the Committee for adoption. However, the amendments to the rules of procedure, drafted by Mr. Kretzmer, should be considered in detail.

3. After an exchange of views in which Mr. FRANCIS, Mrs. EVATT, Mr. LALLAH, Mr. BHAGWATI, Mr. MAVROMMATIS and Mr. PRADO VALLEJO took part, the CHAIRMAN said that the Committee decided to adopt and implement the recommendations contained in the informal note.

Draft amendments to the rules of procedure (document without symbol, English only)

4. Mr. KRETZMER said that the most recent version of the draft amendments to the rules of procedure was dated 4 November 1996. The initial draft had been prepared by Mrs. Chanet, Mr. Buergenthal and himself, while Mrs. Evatt and Mr. Mavrommatis had made suggestions which he had taken into account. He would first introduce the proposed amendments to rule 91. The basic idea was that when the Committee received a communication, it would submit it to the State party with a request for a written reply setting out its observations both on the communication's admissibility, and its merits. The State party would be able to make an application for the communication to be declared inadmissible; the Committee, a working group or a special rapporteur would be able, at their discretion, to decide to delay submission of a complete reply until a decision on admissibility had been taken. Mrs. Evatt was of the opinion that the Committee, the working group or the Special Rapporteur should, from the outset, be given the option not to request a simultaneous reply on both aspects in cases when it was clear that the main issue to be decided was that of admissibility, and that there was no point in requesting the State party to make its observations on the merits. For that reason, the expression "because of the exceptional nature of the case" was used in rule 91, paragraph 2. It was clearly necessary to avoid a return to the current situation. The State party would then have three months to apply for the question of admissibility to be considered separately (rule 91.3). In

Mr. Mavrommatis' view, one month would suffice. The Committee therefore had to decide whether it wished to allow the State party one or three months. The other provisions of rule 91 were virtually the same as those of the existing rule.

Rule 91, paragraph 1

5. Mr. LALLAH said that under current practice, when a communication was sent to the State party with a request for clarification and observations, in conformity with rule 91, paragraph 1, of the current rules of procedure, a copy of the request sent to the author to allow him to provide any clarification was attached to the text of the communication. That was important, as the author might not provide all the information in his communication, as a result of which the State party's attention might not be drawn to certain elements. He asked at what point the procedure described in rule 91, paragraph 1 of the draft amendments came into play: was it on receipt of the first communication, which might be incomplete and require clarification by the author and by the State party, or of the clarification requested from the author?

6. Mr. POCAR said that the practice followed depended on the communication itself. Under normal practice, if the communication was not sufficiently clear, the author was asked to provide clarification and it was only then that the communication was sent to the State party, together with the clarification received from the author. The procedure was different in cases involving death sentences: in such cases, the communication could be immediately sent to the State party, with a request that it should adopt interim measures (rule 86 of the current rules of procedure) and also informing it that further clarification had been requested from the author and that they would subsequently be sent to the State. In such cases, it was important to set the author a very short deadline. However, he did not believe it was necessary to include all those details in the rules of procedure, unless the Committee decided to include a special rule applicable to very urgent cases.

7. Mr. MOVROMMATIS shared Mr. Pocar's view and made a simple practical suggestion - endorsed by Mr. Francis - whose purpose was in no way to amend the text of the article: in cases in which the author of the communication had been sentenced to death, and in which he was frequently represented by counsel, he could be requested simultaneously to send to the State party a copy of the clarification he had sent to the Committee, in order to save time.

8. Mr. KRETZMER said that the issue raised by Mr. Lallah and Mr. Pocar's wish for a degree of flexibility were perhaps covered by paragraph 4 of the draft amendments to rule 91.

9. The CHAIRMAN, summarizing the discussion, said that Mr. Pocar's explanations and Mr. Mavrommatis' suggestions, which were duly recorded in the summary record, would provide a basis for the implementation of paragraph 1 and for its interpretation.

10. It was so decided.

Rule 91, paragraph 2

11. Mr. LALLAH raised a practical consideration with regard to the six-month deadline referred to in the paragraph: he asked how the Committee would inform States parties of the changes made to its rules of procedure without waiting for them to learn of them through its next annual report.

12. Mr. POCAR suggested that, after the proposed amendments had been adopted, the Committee should set the date of entry into force of the new rules and that the Secretary-General should send a note verbale to all the States parties to the Covenant, or at least to those which had ratified the Optional Protocol.

13. Mr. ANDO shared the view expressed by Mr. Lallah and Mr. Pocar, and said it would be desirable, in the note verbale, clearly to indicate the differences between the current rules of procedure and the new rules, and to specify the date on which the Committee would begin to implement the new rules of procedure.

14. The CHAIRMAN invited the members of the Committee to give their views on the desirable date or deadline for the entry into force of the new rules of procedure, bearing in mind the proposal to request the Secretary-General to send a note verbale to States parties informing them of the amendments.

15. After an exchange of views in which Mr. POCAR, Mr. BUERGENTHAL, Mr. BHAGWATI, Mr. LALLAH, Mr. KLEIN and Mr. PRADO VALLEJO took part, the CHAIRMAN said that the date of 1 March 1997 had been agreed upon. Accordingly, a note verbale would be sent by the Secretary-General to the States parties concerned informing them that the Committee's new rules of procedure would come into force on 1 March 1997, in respect of new communications only.

16. It was so decided.

17. Mr. POCAR, referring to the end of paragraph 2, said that in the past States parties, perhaps wishing to accelerate the procedure, had in some cases already provided, at the special request of the Committee, the working group or the Special Rapporteur, extremely exhaustive replies concerning not just the question of admissibility. In his view, States parties wishing to do so should be able, at that stage, to provide replies on the merits of the communication. Accordingly, he suggested adding a second sentence to paragraph 2 to indicate that the request referred to would not prevent the State party from giving a full reply within the six-month deadline.

18. Mr. KRETZMER approved Mr. Pocar's suggestion.

19. The CHAIRMAN said he took it that if there were no objections the Committee approved, in essence, rule 91, paragraph 3 as orally revised.

20. It was so decided.

Rule 91, paragraph 3

21. Mr. KLEIN failed to see exactly how the deadline stipulated in the first sentence (three months or one month) could affect the normal six-month deadline the State party was given to submit its complete reply to the communication.

22. Mr. KRETZMER said that the six-month deadline which the State party was given to submit its full reply, and which was referred to in the second sentence, would not change. The situation covered by the first sentence was one in which the State party took steps to have the communication declared inadmissible and indicated the reasons for doing so. The purpose of paragraph 3 was to clarify that the step did not extend the six-month deadline within which the State party had to submit its explanations or statements, unless the Committee, a working group or a special rapporteur decided to postpone the deadline until - because of the special facts of the case - the Committee had ruled on the question of admissibility.

23. The CHAIRMAN wondered whether it was possible to simplify the text.

24. Mr. BHAGWATI, referring to the deadline of three months or one month mentioned in the first sentence, proposed a deadline of two or three months, as he thought that one month was too short. Moreover, it was necessary to specify from what date the deadline was calculated: was it from the date on which the request for a written reply made by the Committee, a working group or a special rapporteur was received?

25. Mrs. EVATT said that she favoured a three-month deadline.

26. Mr. MAVROMMATIS said that he had proposed a one-month deadline as the procedure in question was the exception rather than the rule. The possibility was limited to cases in which the State party was eager for the communication to be declared inadmissible and in which it could put forward sound arguments - usually failure to exhaust domestic remedies.

27. Mr. POCAR appreciated Mr. Mavrommatis' arguments, but he thought that one month was too short a deadline for the State party to acquaint itself with the file accompanying the communication. In the interests of clarity, he suggested deleting the words "of the said request" in the fourth line of the English text (the only text distributed) of paragraph 3; the deadline would thus be calculated from the date on which the Committee's request was received.

28. Mr. ANDO shared Mr. Pocar's view that to impose a one-month deadline was tantamount to exerting pressure on the State party. Furthermore, he suggested improving the second sentence of the paragraph, first by replacing the words "extend the period" by "change the time limit as set forth in the previous paragraph", secondly by deleting the word "full" before "reply" and lastly by replacing the words "delay submission of that reply" by "grant an extension of the time limit".

29. Mrs. EVATT acknowledged the merit of Mr. Mavrommatis' arguments about the one-month deadline he proposed for the first sentence of the paragraph; however she noted that the Committee preferred a deadline of between six weeks and two months. Regarding the second sentence, she suggested, in the interests of clarification, adding the words "of six months" after the words "extend the period" and deleting the words "because of the special facts of the case" near the end of the sentence.

30. Mr. PRADO VALLEJO preferred a three-month deadline for the procedure to have the communication declared inadmissible and shared Mr. Ando's view that the second sentence could be clearer.

31. Mrs. MEDINA QUIROGA said that, in the light of the arguments put forward by Mr. Mavrommatis, she favoured a period of six weeks for the deadline referred to in the first sentence.

32. Mr. POCAR said he was prepared to accept a deadline of six weeks, two months or three months. Regarding the second sentence of the paragraph, he was prepared to accept the formula proposed by Mr. Ando or Mrs. Evatt and approved Mrs. Evatt's idea of deleting the reference to the "special facts of the case" at the end of the second sentence.

33. Mr. BHAGWATI suggested a six-week or two-month deadline for the first sentence. He approved Mrs. Evatt's suggestion that the reference to the facts of the case, in the second sentence, should be deleted and the suggestion that the word "delay" should be replaced by "extend the time for" at the end of the second sentence.

34. Mr. BUERGENTHAL said that, all things considered, a two-month deadline seemed more reasonable in the context of the first sentence, because he was afraid that a deadline of one month, being so short, would lead to excessive haste and automatically set in motion efforts to have communications declared inadmissible. Regarding the amendments to the second sentence suggested by Mrs. Evatt and Mr. Ando, he would support those that made the text clearer. However, the reference to the facts of the case should not be deleted because, in his view, its inclusion would incite the State party to provide explanations to justify any steps taken to have the communication declared inadmissible.

35. Mr. BAN shared the view that it would be reasonable to grant the State party a two-month deadline which should enable the Committee to receive a concrete and sufficiently well-documented reply. As a matter of fact, it was also the practice of the European Commission on Human Rights to allow States a two-month deadline, which had proved effective.

36. Lord COLVILLE suggested spelling out, at the end of paragraph 3, that submission of such an application would not extend the period of six months which the State party was allowed, unless the Committee decided to extend the time for submission of the reply because of the special circumstances of the case.

37. The CHAIRMAN took it that if there were no objections, the Committee wished to approve rule 91, paragraph 3 as orally revised, subject to any formal changes made by the secretariat.

38. It was so decided.

Rule 91, paragraphs 4, 5 and 6

39. Mr. KRETZMER pointed out that the only difference between paragraph 4 and current rule 91, paragraph 1, was the indication that the State party or the author of the communication could be requested to submit information within specified time limits.

40. The CHAIRMAN took it that if there were no objections the Committee wished to approve in essence new paragraph 4 and paragraphs 5 and 6 of rule 91.

41. It was so decided.

Rule 92, paragraph 3

42. Mr. KLEIN asked for clarification of how it would be decided that a particular member of the Committee had taken part in the adoption of the decision.

43. The CHAIRMAN said it would be the responsibility of the Chairman, with the assistance of the secretariat, to record the names of the members of the Committee who had taken part in the adoption of the decision.

44. New paragraph 3 of rule 92, was adopted.

Rule 93

45. Rule 93 was adopted.

46. Mr. Aguilar Urbina took the Chair.

Rule 94, paragraph 1

47. Rule 94, paragraph 1, was adopted.

Rule 94, paragraph 2

48. Mrs. EVATT said she thought that both proposed versions were acceptable. However, since the first version merely repeated the exact words of the Optional Protocol, by which the Committee was already bound, it would be more constructive to adopt the second.

49. Mr. BUERGENTHAL and Lord COLVILLE shared Mrs. Evatt's opinion.

50. The CHAIRMAN took it that if there were no objections the Committee wished to approve the second version of rule 94, paragraph 2, subject to any formal changes made by the secretariat.

51. It was so decided.

Rule 94, paragraph 3

52. Rule 94, paragraph 3, was adopted.

Rule 94, paragraph 4

53. Mr. MAVROMMATIS thought that the opinions of the members of the Committee as a whole, and not merely a summary, should be appended to the Committee's views.

54. The CHAIRMAN took it that if there were no objections the Committee wished to approve rule 94, paragraph 4 as orally revised by Mr. Mavrommatis.

55. It was so decided.

Rule 95, paragraph 1

56. Mr. KRETZMER noted that the initiative for the amendment had come from a State party which had expressed a number of reservations, out of concern that if confidentiality were no longer assured, pressure might be exerted on the Committee, for example by the press, by non-governmental organizations or by the individuals concerned.

57. Mr. EL SHAFEI said that the practice of considering communications at closed meetings of the Committee had proved useful and effective and should be preserved.

58. Rule 95, paragraph 1, was adopted.

Paragraph 2

59. Lord COLVILLE said that as a rule, procedure under the Optional Protocol should be as transparent as possible. Any pressure brought to bear on the Committee would involve an extra burden of documents to be read and requests for interviews. The members of the Committee would undoubtedly be capable of coping. However, if paragraph 2 were adopted it would be necessary to ensure that members were not personally subjected to pressure or threats. Such a situation might arise in respect of a communication that raised particularly sensitive issues, and the Committee should adopt the appropriate protective measures.

60. Mrs. EVATT said that the rule of confidentiality and the lack of transparency of the Committee's procedure were far from satisfactory. Any pressure that might be brought to bear would be no greater in the future than at present, as anyone could find out whether a communication was being

considered by the Committee, even if the procedure itself was confidential. In her view, the Committee had a duty to practise transparency. For their part, States parties and the authors of communications were free, if they so wished, to make their statements, observations or commentaries public. She nevertheless cautioned the Committee against adopting a rule that would oblige it to make information relating to a communication public. For that reason, she found the wording of the first sentence of paragraph 2 awkward, and would prefer the Committee to state that communications, replies by States parties and other information concerning a communication were not confidential.

61. Mr. MAVROMMATIS said that he too favoured transparency in that sphere but drew attention to the need to protect not only the Committee, but also the secretariat, from any pressure. However, if the whole procedure were public, the Committee would run the risk of rendering meaningless the principle of confidentiality set forth in the Optional Protocol. Generally speaking, the desirability of doing away with the rule of confidentiality before taking protective measures against the threat of outside pressure should be reconsidered.

62. Mr. POCAR subscribed to Mr. Mavrommatis' remarks. He said that to do away with the confidentiality of the procedure would pose a further problem. He asked whether documents concerning a communication, which were prepared by the secretariat and distributed on a restricted basis would then be released for general distribution. In addition, under rule 97 of the rules of procedure, the summary of communications prepared by the secretariat was confidential. As a result, the content of a communication would be made public while its summary would remain confidential.

63. Mr. EL SHAFEI pointed out that rule 97 of the current rules of procedure did not prevent certain stages of the procedure from being made public. He also noted that paragraph 2 of the draft under consideration left it to a working group or a special rapporteur to decide on the confidentiality of communications and the information relating to them. However, the composition of working groups changed from one session to another, as did the rapporteurs. Moreover, the text of paragraph 2 did not specify on what criteria the decision of the groups or the rapporteurs would be based. He cautioned the Committee against the legal problems which that solution might raise in the future. Generally speaking, he thought that rule 95 of the current rules of procedure was perfectly satisfactory, and should therefore be maintained.

64. The CHAIRMAN was not in favour of making the rule of confidentiality absolute. In certain cases it might be necessary to disclose the existence of a communication in order to protect its author. However, the Committee should guard against going too far and carefully weigh up the implications of its decision. Accordingly, it did not seem reasonable to state that communications and information relating to them would be made public. On the other hand, the Committee should make sure that States parties were able to publicize information if they so wished.

65. Mr. ANDO said that he shared Lord Colville's opinion regarding possible pressure. The Committee should nevertheless endeavour to ensure that its individual members were not subjected to pressure and that its debates could in no case be assimilated to a kind of actio popularis. The Committee should preserve its independence, and the rule of confidentiality of its procedure was essential for that purpose.

66. Mr. DE ZAYAS (Centre for Human Rights) pointed out, with regard to the question of outside pressure, that the secretariat was constantly being solicited by parties. It was therefore extremely important that the Committee should clearly specify what could be made public and what should remain confidential. Should it decide to make public the complete file of a communication, the secretariat would be submerged by telephone calls and written requests for information, for the text of communications, etc. That would involve an additional burden of work which it would be impossible for the secretariat to assume, especially in view of current budgetary constraints. To conclude, in his view, while openness was desirable in principle, it should be for the States parties and the authors of communications to practise it.

67. Mr. BUERGENTHAL pointed out that NGOs and other human rights bodies were making increasing use of the Internet, a development which should in the long term make the tasks referred to by Mr. de Zayas considerably easier, should the Committee opt for complete transparency. He was concerned by another aspect, related to freedom of information. Many countries at present possessed legislation on freedom of information under which the authorities were unable to deny individuals access to information. By prohibiting States parties from making public decisions which their legislation required them to disclose, the Committee would place States in a delicate situation. Moreover, it was clear that the Committee had no means of preventing the disclosure of information by a State party.

68. Generally speaking it was desirable for the Committee's procedure to be public. As far as pressure was concerned, it was already exerted and all human rights bodies were subjected to it; there was thus no reason to consider it as a handicap.

69. In his view the principle of confidentiality should not be given greater importance than assigned to it by the Optional Protocol. Moreover, it would be useful if the Committee were to state clearly that parties were free to disclose information relating to them.

70. Mr. KRETZMER subscribed to Mr. Buergenthal's views. However, he drew attention to the problem raised by Mr. Mavrommatis. He understood that Mr. Mavrommatis believed that, under article 5, paragraph 3 of the Optional Protocol, all elements relating to a communication, and the communication itself, should remain confidential until the Committee had adopted its views. The Committee should bear in mind that aspect of the question in taking its decision on rule 95 of the rules of procedure.

71. Mrs. MEDINA QUIROGA shared Mr. Buergenthal's opinion.

72. The provisions of article 5, paragraph 3 of the Optional Protocol, for their part, were designed to protect the secrecy of the Committee's deliberations. It was important that a communication should be considered confidentially, as was the case in all the bodies with a procedure analogous to that of the Optional Protocol. Nevertheless, authorizing a State party or the author of a communication to make public or otherwise disclose information relating to them was not contrary to the Optional Protocol.

73. To conclude, she subscribed to Mr. Buergenthal's views about the possible contradiction between the obligations of a State party under its own legislation and those by which it was bound under the Optional Protocol.

74. Mr. POCAR pointed out that the question of possible pressure was irrelevant, as pressure would inevitably be brought to bear.

75. In his view, the text of rule 95, paragraph 1 of the current rules of procedure was perfectly satisfactory, provided the last sentence was deleted. The parties were free to disclose the content of the Committee's decisions or not to do so.

76. Mrs. EVATT thought it was important to distinguish between the question of the confidentiality of the Committee's procedure and that of the secretariat, in respect of which the Committee should take a separate decision.

77. Mr. FRANCIS endorsed Mr. Mavrommatis' views about the danger of rendering meaningless the provisions of article 5, paragraph 3 of the Optional Protocol. Moreover, the Committee should be careful not to increase the secretariat's workload.

78. Mr. BHAGWATI said that he too was in favour of transparency, and pointed out that article 5, paragraph 3 of the Optional Protocol was simply designed to ensure confidentiality of the exchange of views among members of the Committee when a communication was considered. The meetings at which communications were considered were closed to allow members freely to express themselves. In any event, even in judicial proceedings the parties' pleadings were never confidential, unless the court decided that it was necessary to protect individuals. Generally speaking, he found paragraph 2 of the draft new rule 95 perfectly satisfactory.

79. As for the secretariat, he endorsed Mrs. Evatt's views and thought it was important to take a decision on the rights and duties of the secretariat regarding communications.

80. Mr. LALLAH said his interpretation of article 5, paragraph 3 of the Optional Protocol was somewhat different from that of Mr. Bhagwati. In his view, it followed from that provision that documents relating to a communication and the communication itself could be made public only when the Committee had adopted its views on admissibility or on the merits. He drew attention to the fact that the Committee had decided that the complete text of

its views would be made public and reproduced in its annual report. The purpose of that decision was to provide for the possibility of the parties disclosing only certain aspects of its views, which might distort them.

81. Like Mr. Pocar, he wished to retain rule 95, paragraph 1 of the current rules of procedure, with the exception of the last sentence. Firstly, the Committee was unable to compel a State party to keep information confidential, and secondly the Government of a State party to a communication might be required to report thereon to Parliament or to other national bodies.

82. Mr. KRETZMER suggested including a provision to allow States parties and the authors of communications to make public communications submitted to the Committee, the replies and other information relating thereto, unless a working group or special rapporteur decided that the documents in question should remain confidential. Moreover, the last sentence of paragraph 2 of the draft should be retained.

83. Mr. FRANCIS suggested the members of the Committee should not interpret article 5, paragraph 3 of the Optional Protocol too restrictively. As a corollary, it was necessary to specify exactly what should remain confidential and what could be made public, as the Committee's standing and prestige depended thereon.

84. Mr. POCAR suggested, in view of the urgency of completing the consideration of other items on the agenda, that the secretariat should prepare a new draft rule 95, taking into account the discussion; the draft would be submitted to the members of the Committee for adoption at its fifty-ninth session.

85. It was so decided.

The meeting rose at 1 p.m.